

**REPORT - PLANNING COMMISSION MEETING**  
**January 22, 2004**

**Project Name and Number:** Secondary Dwelling Units/ Multifamily Parking ZTA (PLN2003-00201)

**Applicant:** City of Fremont

**Proposal:** To consider a Zoning Text Amendment to amend applicable sections of Title VIII [Planning and Zoning], Chapter 2 [Zoning] of the Fremont Municipal Code to (a) adopt clear and objective standards for the development of Secondary Dwelling Units (SDUs) for consistency with State Law and implementation of the City's certified Housing Element; and, (b) clarify provisions allowing parking reductions for multi-family developments.

**Recommended Action:** Recommend to City Council Zoning Text Amendment PLN2003-00201, amending (a) Secondary Dwelling Unit provisions in Title VIII [Planning and Zoning], Chapter 2 [Zoning] of the Fremont Municipal Code; and, (b) amending provisions related to multi-family parking provisions.

**Location:** City wide

**Agent of Applicant:** Not applicable

**Consultant(s):** Not applicable

**Environmental Review:** The Zoning Text Amendment pertinent to provisions for Secondary Dwelling Units is statutorily exempt from the California Environmental Quality Act (CEQA) per Section 15282(i) [Statutory Exemptions]; the Zoning Text Amendment pertinent to clarify provisions allowing parking reductions for multi-family developments is exempt per CEQA Section 15061(b)(3) [Review for Exemption].

**Existing General Plan:** Residential land use designations

**Existing Zoning:** R-1, R-2, R-3, R-G, O-S, and P Districts.

**Public Hearing Notice:** Public hearing notification is applicable. Two one-eighth (1/8)-page display advertisements were delivered to *The Argus* for amendments to the Secondary Dwelling Units and Multi-family Parking regulations on January 5, 2004 and January 6, 2004, respectively, to be published by January 12, 2004. In addition, 251 courtesy notices were mailed out on January 8, 2004 to affordable housing interest groups and individuals.

**Executive Summary:** The proposal before the Planning Commission is to recommend a Zoning Text Amendment (ZTA) to the City Council that would (a) adopt clear and object standards for the development of Secondary Dwelling Units (SDU) consistent with State law and for implementation the City's certified Housing Element; and, (b) clarify provisions allowing parking reductions for multi-family developments. In response to changes in State Law, a ZTA previously adopted by City Council in July of 2003 eliminated the City's Zoning Administrator Permit discretionary review process and public hearing requirements for SDUs. At that time, it was identified that other standards applicable to the development of SDUs would be considered in a subsequent amendment for consistency with State Law and the Housing Element. Accordingly, a comprehensive revision to these SDU development standards is proposed. In addition, in light of the concerns regarding a recent approval of a ZTA that sets provisions for allowing parking reductions for multi-family residential projects if certain findings are met, the proposed ZTA also clarifies those provisions to ensure that parking reductions are only granted when warranted.

**State Legislative History (Second Units):** The Legislature first expressed its interest in SDUs in 1982 [SB 1534] when it acknowledged the "tremendous unmet need" for additional housing in California. In brief, the Legislature declared that

“existing housing resources are vastly underutilized,” and determined that the development of SDUs was a useful tool to provide (a) a cost-effective means of meeting the housing demand through the use of existing infrastructure; (b) relatively affordable housing; (c) a means for homeowners of new or existing homes to pay their high interest loans; and, (d) security for homeowners living alone (i.e., companion units).

On September 29, 2002, the Governor signed into law AB 1866 (Wright) 2002, the first major revision to the second unit statute (Gov. Code § 65852.2). AB 1866 (Wright) 2002, amended the statutory law to require that, among other changes, on or after July 1, 2003, an application received under a local ordinance adopted pursuant to Gov. Code § 65852.2(a) must be **considered ministerially** without discretionary review or hearing. The section in the law that permitted a city to require a conditional use permit was deleted. A local jurisdiction, such as the City of Fremont, no longer was able to exercise its discretion to approve, conditionally approve or deny a proposed second unit, and property owners no longer had the right to appeal or request a public hearing.

The statute continues to identify which standards a local jurisdiction may apply to the review of second units. A local jurisdiction may create a detailed set of development criteria, including parking, building height, setback, lot coverage, unit size, architectural review, and standards that prevent adverse impacts to historically significant properties. The only significant change under the amended law is that the City must review a secondary dwelling unit application under the City adopted standards ministerially. If a proposed secondary dwelling unit satisfies the detailed set of development criteria, then the local jurisdiction must approve the application ministerially (via building permit process).

**Fremont’s Secondary Dwelling Unit Ordinance/Background:** On June 21, 1983, the City Council adopted a Zoning Text Amendment [ZT-83-4] to allow SDUs in any single-family district, one and two family residence district and residential planned district in response to the State’s original mandate. The adoption of a comprehensive ordinance allowed the City to have discretionary approval of SDUs by means of the Zoning Administrator Permit process. The units had to meet codified standards, and findings of approval for compatibility had to be substantiated. Additionally, the Zoning Administrator would conduct public hearings on proposed units, as necessary.

Except for minor modifications to some standards, subsequent amendments only clarified the ordinance’s wording and corrected omissions. The section of the zoning ordinance pertaining to SDUs remained relatively unchanged since its initial adoption in 1983.

In July of 2003, in light of AB1866 (Wright) 2002, City Council approved a Zoning Text Amendment that removed the Zoning Administrator Permit (a use permit) and public hearing requirements for the creation of SDUs.

At an October, 2003 City Council work session, staff introduced possible amendments to the Secondary Dwelling Unit (SDU) ordinance. Possible amendments were proposed to building and siting development standards for SDUs, which included: location and lot size requirements; maximum size allowance; development criteria for required parking; maximum height allowance; and, provisions to ensure protection of historically significant properties. Much discussion focused on provisions relating to the maximum size allowance for SDUs, and comments were provided to staff. City Council, however, generally supported staff’s proposed amendments. Staff informed City Council that a Zoning Text Amendment would be scheduled in February of 2004 for public hearing and ordinance introduction.

In November of 2003, a work session was also scheduled with the Planning Commission. The Planning Commission also showed its support for the proposed amendments, noting that the provisions provided flexibility for the creation of SDUs.

**Fremont’s Multi-family Parking Ordinance/Background:** In July of 2003, in response to direction provided by the City’s certified Housing Element (Program 14), City Council adopted new parking standards for all types of residential uses based on bedroom count rather than type of unit. The intent of the modifications is to tie minimum parking requirements to anticipated levels of use, consistent with a majority of other municipalities in the Bay Area. As part of the modifications, provisions allowing parking reductions for multi-family residential uses were also approved; however, staff was directed to define specific language on parking requirements to ensure sufficient accommodation of off-street parking for multifamily developments. Council indicated its intention to ensure that future parking congestions, as evident on Norris and Mattos Roads, are avoided.

In the October, 2003 City Council work session, along with the proposed amendments to the SDU provisions, staff introduced possible amendments to multi-family parking provisions to address concerns of the City Council. The amendment introduced clarified that parking reductions may only be granted by the Planning Commission when, based upon substantial evidence, there is sufficient off-street parking in the surrounding area of the multi-family development proposed.

**Project Description and Analysis:** The ZTA will amend development standards for the creation of SDUs as well as modify parking provisions for multi-family residential uses (section 7 or report). What follows is a section-by-section review of the ordinance proposed for revision. New text is underlined and text to be eliminated has been ~~struck~~. A brief analysis follows each section. Options are also proposed in some instances. Please note that the superscript [<sup>3</sup>] denotes the proposed special provisions for SDUs found in Article 21.3 (Special Provisions Applying to Miscellaneous Uses) of Chapter 2 (Zoning), Title VIII (Planning and Zoning) of the Fremont Municipal Code. In addition, where not indicated otherwise, the text describing “uses” contained within the various sections of the code is amended to list “uses” in alphabetical order.

#### **Section 1:**

Section 8-2141.2.1. (Dwelling, secondary). Article 1 (Definitions.) of Chapter 2 (Zoning), Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

Sec. 8-2141.2.1. Dwelling, secondary.

~~“Secondary dwelling” shall mean an additional dwelling unit on a single family or two family lot which has kitchen, sleeping and full bathroom facilities.~~ “Secondary dwelling” means an additional dwelling unit established in conjunction with a single-family dwelling on the same lot. A secondary dwelling unit shall include a kitchen, sleeping and full bathroom facilities with a permanent foundation. As provided in Government Code §65852.2, efficiency apartments and manufactured homes may be developed and occupied as secondary dwelling unit uses consistent with this Chapter.

Staff analysis: The definition of “secondary dwelling” is amended for clarification to indicate that a secondary dwelling unit is accessory to the principally permitted use. In addition, State law requires that the definition of a secondary dwelling unit include efficiency units, codified as “efficiency apartments” in the Ordinance, and manufactured homes.

#### **Section 2:**

Section 8-2802. (Accessory uses.), Article 8 (R-G Garden Apartment Residence District) of Chapter 2 (Zoning), Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

Sec. 8-2802. Accessory uses.

The following are ~~the~~ accessory uses permitted in an R-G district:

- ~~(e)~~ (a) Private garages and parking areas;
- ~~(a)~~ (b) Rooming and boarding of not more than two persons;
- ~~(e)~~ (c) Satellite dish antennas;
- (d) Secondary dwelling units.<sup>3</sup>;
- ~~(b)~~ (e) Signs complying with the applicable regulations set forth in Article 21 of this chapter;
- ~~(d)~~ (f) Small family day care homes;<sup>1</sup> and
- ~~(f)~~ (g) Other accessory uses and buildings customarily appurtenant to a permitted use.

Staff analysis: Government Code §65852.2 currently mandates that local agencies allow SDUs in single-family and multi-family districts. In 1994, the statute was amended to read, “*No local agency shall adopt an ordinance which totally precludes second units [SDUs] within single-family **or** multi-family zoning districts unless the ordinance contains findings acknowledging the ordinance may limit housing opportunities of the region as well as contains further findings that specific adverse impacts on the public health, safety and welfare would result from allowing the units.*” (Emphasis added) The revision replaced the word “**and**” with the word “**or**”, requiring local jurisdictions to allow SDUs **in both** single-family and multi-family residential districts.

Staff believes that SDUs should be permitted in the R-G district because single-family dwellings are principally permitted uses on lots of equal to or less than 7,500 square feet. The 7,500 square foot provision attempts to deal with existing single-family dwellings that are generally located adjacent to existing and proposed apartment developments. Oftentimes, owners of these “passed over parcels” seek to increase the number of units on the parcel. However, because of the small size of the parcel, it is infeasible to develop additional full-sized units on the site, consistent with the intent of the R-G district. Allowing development of secondary units on such underutilized sites provides a “smart growth” opportunity to add housing stock without using additional land. A special provision is included under Section 6 of this report where the number of dwelling units (principal and secondary) for any lot developed with a secondary dwelling unit may not exceed two units.

### Section 3:

Section 8-21711.(b) (On lands designated hill face open space on the general plan land use diagram: Uses.) Article 17.1 (O-S Open space district) of Chapter 2 (Zoning), Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

Sec. 8-21711. On lands designated hill face open space on the general plan land use diagram: Uses.

(b) Accessory uses:

~~(3)~~ (1) Home occupations, in principal dwelling unit only; <sub>1</sub>

~~(2)~~ (2) Rooming and boarding of not more than two persons;

(3) Secondary dwelling units.<sup>3</sup>;

~~(4)~~ (4) Signs complying with the applicable regulations set forth in Article 21 of this chapter; <sub>1</sub>

Staff analysis: Because single-family residences are conditionally permitted uses in the hill face open face designation above the Toe of the Hill (TOH), developed in conformance with the Hill Initiatives (Measures A and T), staff finds that SDUs should also be allowed as an accessory use for those existing or proposed legal parcels developed with a residence. Except for the Conditional Use Permit requirement and when consistent with State Law, all development standards (e.g., Hill Initiatives and Hill Area Development Policy) applicable for development in the hill face open space will apply to the development of a secondary dwelling unit. Special provisions are also included in section that will disallow the development of SDUs on lands found to be constrained as indicated in Section 8-21715.1 [Land constraints] of this district.

### Section 4:

Section 8-21713. (On lands designated hill open space on the general plan land use diagram: Uses.) Article 17.1 (O-S Open space district) of Chapter 2 (Zoning), Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

Sec. 8-21713. On lands designated hill open space on the general plan land use diagram: Uses.

(b) Accessory uses:

- ~~(7)~~ (1) Home occupations <sup>3</sup> ~~in principal dwelling unit only.~~
- ~~(4)~~ (2) One guesthouse, not rented or otherwise conducted as a business;
- ~~(4)~~ (3) Private garages and other structures for the storage of equipment, parking areas and private stables;
- ~~(2)~~ (4) Roadside stands complying with the applicable regulations set forth in Article 21.3 of this chapter;
- (5) Rooming and boarding of not more than two persons;
- (6) Secondary dwelling units<sup>3</sup>.
- ~~(3)~~ (7) Signs complying with the applicable regulations set forth in Article 21 of this chapter;
- ~~(6)~~ (8) Other accessory uses and buildings customarily appurtenant to a permitted use;

Staff analysis: Because single-family residences are also conditionally permitted uses in the hill open space above the TOH, developed in conformance with the Hill Initiatives (Measures A and T), staff finds that SDUs should also be allowed as an accessory use for those existing or proposed legal parcels developed with a residence. All standards applicable to the hill face open space designation mentioned in section 3 of this report (above) would also apply to this district.

#### **Section 5:**

Section 8-21713.1.(b) (On lands designated open space on the general plan land use diagram: Uses.) Article 17.1 (O-S Open space district) of Chapter 2 (Zoning), Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

- (b) Accessory uses:
  - ~~(7)~~ (1) Home occupations ~~in principal dwelling unit only.~~
  - ~~(4)~~ (2) One guesthouse, not rented or otherwise conducted as a business;
  - ~~(4)~~ (3) Private garages and other structures for the storage of equipment, parking areas and private stables;
  - ~~(2)~~ (4) Roadside stands complying with the applicable regulations set forth in Article 21.3 of this chapter;
  - (5) Rooming and boarding of not more than two persons;
  - (6) Secondary dwelling units<sup>3</sup>.
  - ~~(3)~~ (7) Signs complying with the applicable regulations set forth in Article 21 of this chapter; and
  - ~~(6)~~ (8) Other accessory uses and buildings customarily appurtenant to a permitted use;

Staff analysis: The Hill Initiatives (Measures A and T) do not apply to properties designated Open Space located below the TOH. Although there are only a few residences located in the Open Space zoning district with a general plan land use designation of "Open Space", staff finds that a secondary dwelling unit should also be allowed as an accessory use for those existing or proposed legal parcels that conditionally permit single-family residences located below the TOH (A conditional use permit is required for a single-family home in this specific district, unless it is legally nonconforming).

#### **Section 6:**

Sec. 8-22159.5. (Secondary dwelling units.), Article 21.3 (Special Provisions Applying to Miscellaneous Uses) of Chapter 2 (Zoning), Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

Sec. 8-22159.5. Secondary dwelling units.

Secondary dwelling units, as defined in this chapter, shall be allowed in any single-family residence district, one- and two-family residence district or residential planned district allowing one- or two-family dwellings, open-space and planned district districts subject to the following ~~requirements, restrictions, limitations and standards~~:

(a) *Permitting procedure.* Any application for a secondary dwelling unit that meets the location and development standards contained in this subsection (b) shall be subject to ministerial review and approval by the development organization staff without discretionary review or public hearing. No secondary unit shall be established or maintained until there has been a building permit approved by the development organization. The application for ~~such~~ the permit shall include:

- (1) Site plan indicating location of existing residence, proposed secondary dwelling unit and parking;
- (2) Floor plan of existing residence and proposed secondary dwelling unit; and,
- (3) Elevations of all sides of the principal and secondary dwelling unit.
- (4) A topographic survey and grading plan may be required.

(b) *Criteria for secondary dwelling units.*

(1) Location:

- a. ~~Secondary dwelling units~~ Only one secondary dwelling unit shall only be allowed in conjunction with an existing or proposed single- family dwelling unit on a corner lot or a larger sized interior lot legal lot<sup>1</sup> with a minimum lot area<sup>1</sup> equal to or greater than 5,000 square feet. ; provided, however, that no more than two dwelling units shall be placed on the same parcel.

Staff analysis: Staff recommends that the Planning Commission permit SDUs on legal lots equal to or greater than 5,000 square feet instead of retaining the existing requirement of allowing SDUs on “larger sized lots, such as corner lots”. A larger sized lot is not defined in the ordinance and is subjective. Staff believes that the proposed 5,000 square foot minimum lot size requirement provides a clear, object standard that staff can apply ministerially. In addition, staff believes that a lot of 5,000 square feet is sufficient in size to accommodate a secondary dwelling unit.

- b. A secondary dwelling unit shall not be allowed on a lot greater than 7,500 square feet located in the R-G district or on a lot greater than 6,000 square feet located in the R-3 district.

Staff analysis: Staff believes that SDUs should be permitted in the R-G and R-3 (recently approved as an accessory use with the adoption of the new district) districts. The intent of the R-G and proposed R-3 district is to provide for multi-family housing. To achieve that intent of fostering multi-family development in these two districts, these districts establish minimum lot size requirements of 7,500 square feet and 6,000 square feet, respectively. Staff, therefore, recommends that SDUs should be permitted on lots equal to or less than 7,500 square feet in the R-G district and equal to or less than 6,000 square feet in the proposed R-3 district. This will allow for SDUs on existing legal lots generally developed with single-family residences that do not meet minimum lot area requirements established for practical development of multi-family housing. Additionally, permitting SDUs in multi-family districts (with development standards and restrictions) satisfies State law requiring SDUs in both the single- and multi-family districts.

- c. A secondary dwelling unit shall not be allowed on constrained land as identified in Sections 8-21821.1 and 8-21715.1 of this chapter.

Staff analysis: Because some residential planned districts are located within or near constrained land as defined by the two sections indicated in the above amendment, staff believes that a provision should be included to clearly indicate that a secondary dwelling unit may not be located on constrained land (e.g., lands having slopes in excess of thirty percent).

- d. A secondary dwelling unit is not required to meet the density requirements of the General Plan, but shall otherwise be consistent with General Plan text and diagrams as provided in Government Code §65852.2.

Staff analysis: State law provides that SDUs are not required to meet density requirements of the General Plan. Staff suggests including the above language for clarification purposes.

- e. A secondary dwelling unit may be attached (i.e., through conversion of existing floor area or addition of new floor area) or detached to the existing/proposed principal dwelling.
- b. f. The A secondary dwelling unit shall only be located only within the an area of the lot allowed for the principal dwelling single-family dwelling by the zoning ordinance as established by its zoning district. The secondary dwelling unit may be established through conversion of existing or construction of new floor area. :
1. Conversion of existing floor space area in a single family dwelling;
  2. An addition to an existing single family dwelling;
  3. Conversion of an existing accessory structure, provided it is located within the area allowed for principal dwellings; and
  4. The construction of a new accessory structure which is located within the area allowed for principal dwellings.
- e. For interior lots, secondary dwelling units may be allowed only if there exists a twelve foot wide side yard between the principal structure and the interior lot line on one side.

Staff analysis: Above language is revised to be more clear and concise and to reflect the changes proposed as part of these revisions to the Second Unit Ordinance.

- (2) Occupancy: Both units A secondary dwelling unit may be occupied as a separate single-family dwellings only if the legal owner of the lot occupies one of the units dwellings located on the lot; otherwise, the two units secondary dwelling unit and the dwelling to which it is accessory shall be occupied as if they were one single-family dwelling. Nothing in this section prohibits one or both the secondary dwelling unit or principal dwelling on the lot of the dwelling units to from remaining vacant. The City Development and Environmental Services Director shall require recordation of a deed restriction setting forth this occupancy requirement before issuing a building permit.
- (3) Size: The total floor area<sup>1</sup> of the secondary dwelling unit shall be no less than two hundred and seventy-five one hundred fifty square feet nor more than six hundred square feet. The secondary dwelling unit shall have no more than one bedroom. the maximum allowable area permitted based on the following table:

Parcel Size	Maximum Allowable Total Floor Area <sup>1</sup> of Unit
≥ 5,000 square feet	700 square feet
≥ 8,000 square feet	800 square feet
≥10,000 square feet	900 square feet

Staff analysis: The Housing Element indicates that current regulations for SDUs should be evaluated to encourage the development of more second units. Under State law, a secondary dwelling unit may be a maximum size of 1,200 square feet (or greater if a local jurisdiction adopts its own standards). Staff believes that an increase in the maximum allowable floor area for a SDU will encourage development of SDUs. Staff believes that square footage of a secondary dwelling unit should be increased from a maximum of 600 square feet to a maximum of 900 square feet, depending on size of parcel. In other words, a larger parcel will be able to construct a larger second unit based on the table above. This could allow for additional habitable living space and potentially two bedrooms (California Building Code requires a residence to establish at least one bedroom with a minimum of 120 square feet; no habitable room may be less than 70 square feet). Should the Planning Commission find that the proposed increase in square footage is inappropriate, direction should be provided to staff regarding the acceptable size and limitation on number of bedrooms. Illustrations of sample floor plans will be provided for the Planning Commission at the hearing.

In addition, because the California Building Code establishes minimum requirements for habitable living space, the previous minimum size requirement is modified.

(4) Design:

- a. ~~The unit shall be clearly subordinate to the principal dwelling unit on the parcel by size, location and appearance.~~ A secondary dwelling unit shall incorporate architectural features, building materials and colors that are compatible with the existing or proposed principal dwelling unit.
- b. ~~The exterior appearance and character shall reflect that of the existing principal dwelling unit.~~
- c. ~~Outside stairways to the secondary dwelling unit shall not be in the front of the principal dwelling unit.~~

(5) Building height<sup>1</sup>: An attached or detached secondary dwelling unit located in the area permitted for the principal unit may not exceed the building height limitation applicable to the principal unit on the lot.

Staff analysis: The current special provisions for SDUs do not provide building height standards. Building height standards generally are provided in the respective zoning district based on type of structure (principal versus accessory). For example, the R-1 single-family zoning district provides a building height limitation of 12 feet for an accessory structure. An accessory structure is defined under Section 8-2199.19.2 of the FMC as a "structure subordinate to or part of the principal use [dwelling] on the same lot and serving a purpose customarily incidental to the principal use or structure" (e.g., a carport, shed, workshop or guesthouse). Under the existing Ordinance, a 12-foot height limitation has been consistently applied to detached SDUs based on that standard. However, a secondary dwelling unit must comply with more restrictive setbacks than ordinary accessory structures. In fact, SDUs must meet the same setbacks as the principal dwelling. Staff believes that increasing the building height for a detached secondary dwelling unit to the height that is required for the principal dwelling is appropriate. Staff finds that the building height increase allows for efficient use of lot, while potentially reducing the amount of hardscape or impervious surface created on the lot. For instance, a property owner can then construct a secondary dwelling unit above a detached garage instead of constructing two detached structures side by side. Additionally, this also allows yard area to be preserved for the enjoyment of the residents.

(6) Number per lot: A lot may not have more than one secondary dwelling unit. In no case shall the total number of dwellings<sup>1</sup> (i.e., principal and secondary units) exceed two on any lot developed with a secondary dwelling unit.

Staff analysis: Staff recommends that no more than one secondary dwelling unit should be allowed on a lot, and a lot developed with a secondary dwelling unit shall not contain more than two dwellings. Staff believes that the development of a secondary dwelling unit should not be allowed to dominate a lot intended for its principal use.

(7) Number of bedrooms: A secondary dwelling unit may not have more than two bedrooms.

Staff analysis: Staff recommends that no more than two bedrooms be permitted. This allows for the possibility of a caretaker's room for assisted living. Staff believes that because it is proposed that one parking space is required per



bedroom, in accordance with State Law, only those lots with sufficient lot area are able to develop a Secondary Dwelling Unit with two bedrooms. The parking exceptions as proposed for SDUs only apply to one space; a second parking space must be located in the side or rear setback area (See Illustrations).

~~(5) (8) Parking: The provisions of Article 20 of this chapter (Parking Regulations) shall be applicable to the principal dwelling unit and the secondary dwelling unit with the following modifications: The secondary dwelling unit shall be provided with one off street parking space on the subject site; it may be uncovered, but it may not be located in the required front or side street side yard and it may not be a tandem space. When parking is provided within an interior side yard, the minimum side yard width shall be twelve feet. This parking space is in addition to the off street parking required for the principal dwelling. The required parking for a secondary dwelling unit shall conform to the provisions of Article 20 of this chapter.~~

~~(6) Subdivision: No subdivision of land or air rights shall be allowed. The city shall require recordation of a deed restriction setting forth this restriction.~~

Staff analysis: The existing subdivision provision is unnecessary in that the Subdivision Map Act, codified under Title VIII, Chapter 1 [Subdivisions] of the Fremont Municipal Code, already establishes provisions for subdivisions.

(9) Permanent foundation: A permanent foundation shall be required for all secondary dwelling units.

(c) Listed Historic Lots. Notwithstanding subsection (a), a secondary dwelling unit may only be allowed on a lot that is listed in the National Register of Historic Places, the California Register of Historical Resources or any adopted local list of historic resources if Site Plan and Architectural Approval is granted by the Historical Architectural Review Board.

Staff analysis: As permitted under State law, and to protect and preserve the City's real property historic inventory list as well as those listed in either the National Register of Historic Places or the California Register of Historical Resources, staff recommends that the Planning Commission only allow the development of SDUs on these historic resources if Site Plan and Architectural Approval is granted by the Historical Architectural Review Board (HARB).

## **Section 7:**

Section 8-22003. (Required parking spaces by types of use.), Article 20 (Parking, loading areas and regulations pertaining to vehicle storage in various zoning districts) of Chapter 2 (Zoning), Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

Sec. 8-22003. Required parking spaces by type of use.

The number of off-street parking spaces required for each use shall be as stipulated in the following section. In computing the number of off-street parking spaces required, a fractional space of one-half space or more shall be counted as one space.

(a) Residential uses.

(1) Dwellings, single-family, duplexes:

- a. Dwellings, single-family, with four or fewer --2 covered
- b. Dwellings, single-family, with five or more bedrooms--3 covered.

(2) Dwellings, multiple (including apartments, condominiums, townhouses, live/work<sup>3</sup> units, rooming and boarding houses<sup>1</sup>, and single room occupancy (SRO) and efficiency<sup>1</sup> units):

- a. Senior citizen housing developments<sup>1</sup>, efficiency apartments<sup>1</sup>, single room occupancy units<sup>1</sup> and rooming and boarding houses<sup>1</sup>--0.5 covered spaces per unit for residents plus 0.5 uncovered spaces per unit designated for guest parking only.
- b. Studio and one-bedroom units--1 covered space per unit for residents plus 0.5 uncovered spaces per unit (1.5 spaces per live/work<sup>3</sup> unit) designated for guest parking only.
- c. Two bedroom units and larger--1 covered space per unit for residents plus 0.5 uncovered spaces per unit for residents plus 0.5 uncovered spaces per unit (1.5 spaces per live/work<sup>3</sup> unit) designated for guest parking only.

The planning commission may not reduce parking requirements within section (a)(2) for a project where, based upon substantial evidence, there is insufficient off-street parking to meet the needs of the neighborhood. Where there is sufficient off-street parking to meet the needs of the neighborhood, a parking reduction may only be granted by the The planning commission may reduce the parking requirements within section (a)(2) through site plan and architectural approval if, based on evidence provided by the project applicant, it makes one of the following findings:

- i. Due to the use's proximity to alternative transportation infrastructure and service, including but not limited to BART, Amtrak, and other passenger rail services, bus service, or similar, the use is likely to require a lower level of parking than is required by similar projects not proximate to alternative transportation because residents will have viable transportation alternatives available.
- ii. Due to the use's proximity to amenities, and/or due to the desire to create a more pedestrian oriented environment in and around the project site, a reduction in required parking will further the goal of enhancing and strengthening the neighborhood, and, furthermore, that residents will have access to amenities such as shopping, entertainment, and employment without necessitating the use of automobiles.
- iii. Due to the anticipated tenancy, including but not limited to affordable units, senior citizen units, single room occupancy (SRO) and efficiency<sup>1</sup> units, and special needs housing, and based on quantifiable evidence, the use is not likely to require the same levels of parking as standard residential development. This finding shall only be used for projects that have entered into a binding agreement with the city or other public agency guaranteeing the project will serve the identified tenancy type.
- iv. Due to the availability of on-street parking, the guest parking requirement for the project will be lower than a development where adequate on-street parking is not provided. This finding shall only be used to lower the guest parking requirement, and not the resident parking requirement.

Staff analysis: Based on the Work Session with City Council on October 27, 2003, the above provision is modified to ensure that parking reductions are not granted for projects where there exists off-street parking deficiencies.

- (3) Dwellings, secondary--1 space per bedroom (may be uncovered). Space(s) must be provided in the rear and side yard setback areas. Where parking in the rear and side yard setback areas is not feasible due to site-specific conditions, then one space may be located in the front yard on an extended driveway developed in conformance with this article. Tandem parking is permitted only if an extended driveway cannot be accommodated.

Staff analysis: Staff believes that the current parking standard for SDUs may be inconsistent with State Law. In the proposed amendment, parking in the side and rear yard setback areas is still the preference over parking in the front yard area. Based on site specific conditions, should parking in these areas be determined by staff to be infeasible, parking will be then permitted on an extended driveway in the front yard. The exception would be granted only for one space; if a second unit requires two parking spaces, then the second required (uncovered) space would have to be located in the

side or rear yard setback area. This ensures that a Secondary Dwelling Unit with more than one bedroom (a maximum of two bedrooms is proposed) will only be permitted if the site can afford sufficient area for its development. Tandem parking in the front yard on the driveway apron will only be allowed for only one space, if an extended driveway cannot be accommodated. Illustrations will be provided for the Planning Commission at the hearing.

- (4) Mobile home--2 per mobile home space.
- (5) Mobile home park community building--1 per 10 mobile home spaces.
- (6) Mobile home park visitor parking--1 per 5 mobile home spaces located no further than 400 feet from the mobile home spaces to be served.

**General Plan Conformance:** Implementation of this amendment is found to be consistent with the goals of the General Plan, as indicated under Land Use and Housing Elements, which, in part, state:

**Land Use Element**

Policy LU 1.10:

*To provide for increased flexibility in the use of existing and future housing stock and increase the availability of affordable housing, a secondary housing unit may be permitted and added to an existing or with a new single-family home in a residentially designated area.*

Implementation 1:

*The zoning ordinance shall establish appropriate secondary units in accordance with the provisions of State Law.*

**Housing Element**

Policy 3C:

*Encourage the development of a diverse housing stock that provides a range of housing types (including family and larger-sized units) and affordability levels and ensures that affordable housing is equitably distributed throughout the city's planning areas consistent with the Hill Area Initiative of 2002.*

Implementation 26:

*As discussed in the "Other land Use Standards/Requirements" subsection of Chapter 4 [of the General Plan], revise the City's existing second unit Ordinance to encourage the production of more second units on residential parcels. The revised Ordinance will also eliminate the discretionary review (Zoning Administrator Permit) and public hearing requirements consistent with State law (Assembly Bill 1866, 2001-2002). In addition, the City will evaluate existing parking, square footage and other requirements to determine whether revisions would encourage the development of more second units.*

Responsible Party:

*Development and Environmental Services Department, Planning Division*

Objective:

*25 Moderate-Income Units total from 2001-2006*

Staff believes that the proposed amendment will encourage additional SDUs consistent with the goals and policies of the General Plan and the intent of State Law.

Policy 3A:

*Adopt appropriate land use regulations and other development tools to encourage the development of affordable housing.*

Program 14:

*Modify Parking Requirements: the City will review its existing parking requirements and revise those requirements depending on size of the housing unit, number of bedrooms and projected household income levels of proposed occupants. The City will provide special consideration in revising requirements for affordable housing, second units and mixed-use developments. The City will take into account in this reassessment parking standards under certified housing elements of nearby cities.*

Staff continues to believe that it is appropriate to provide provisions which allow for parking reductions in multi-family developments when it can be determined, with certainty, that such parking reductions are warranted and do not create parking congestions resulting in an adverse impact on surrounding on-street parking facilities. As proposed, the Zoning Text Amendment clarifies that the Planning Commission may only grant parking reduction based on the aspects of the project where sufficient off-street parking is provided in the surrounding area.

Additionally, flexibly in the development of required parking for SDUs is also proposed. As previously mentioned, under the amendment proposed a property owner may request parking in the front yard area on an extended driveway if, due to site constraints, parking in the side and rear yard setback areas is infeasible. Should parking on extended driveway cannot be accommodated, tandem parking on an existing driveway apron will be permitted. These exceptions, however, are limited to only one space.

**Environmental Analysis:** The proposed project involving a Zoning Text Amendment to applicable provisions relating to the development of SDUs and multi-family parking provisions are exempt from the California Environmental Quality Act (CEQA) per Sections 15282(i) and 15061(b)(3), respectively. CEQA statutorily exempts "the adoption of an ordinance regarding second units in a single-family or multifamily residential zone by a city or county to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code as set forth in Section 21080.17 of the Public Resource Code." In addition, because it can be seen with certainty that there is not possibility that the text amendment relating to multi-family parking provisions will not have a significant effect on the environment, the amendment is not subject to CEQA under Section 15061(b)(3).

**Enclosures:** Informational 1 (State Statute for Second Units)

**Exhibit:** Exhibit "A" (Zoning Text Amendment)

**Recommended Actions:**

1. Hold public hearing.
2. Find PLN2003-00201 is exempt from review under the California Environmental Quality Act per Sections 15282 [Statutory Exemption] and 15061 [Review for Exemption].
3. Find PLN2003-00201 is consistent with the General Plan in that it implements Land Use and Housing Goals and implementation programs enumerated in the staff report.
4. Find the public necessity, convenience and general welfare require the adoption of this Zoning Text Amendment because it ensures the public health, safety and welfare of communities in conformance with State law.
5. Recommend PLN2003-00201 to the City Council in conformance with Exhibit "A" (Zoning Text Amendment).

## Exhibit "A"

### Secondary Dwelling Units (SDUs)/Multi-family Parking – (PLN2003-00201)

#### Zoning Text Amendment

##### Section 1:

Section 8-2141.2.1. (Dwelling, secondary). Article 1 (Definitions.) of Chapter 2 (Zoning), Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

Sec. 8-2141.2.1. Dwelling, secondary.

~~"Secondary dwelling" shall mean an additional dwelling unit on a single family or two family lot which has kitchen, sleeping and full bathroom facilities.~~ "Secondary dwelling" means an additional dwelling unit established in conjunction with a single-family dwelling on the same lot. A secondary dwelling unit shall include a kitchen, sleeping and full bathroom facilities with a permanent foundation. As provided in Government Code §65852.2, efficiency apartments and manufactured homes may be developed and occupied as secondary dwelling unit uses consistent with this Chapter.

##### Section 2:

Section 8-2802. (Accessory uses.), Article 8 (R-G Garden Apartment Residence District) of Chapter 2 (Zoning), Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

Sec. 8-2802. Accessory uses.

The following are the accessory uses permitted in an R-G district:

- ~~(e)~~ (a) Private garages and parking areas;
- ~~(a)~~ (b) Rooming and boarding of not more than two persons;
- ~~(e)~~ (c) Satellite dish antennas;
- (d) Secondary dwelling units;<sup>3</sup>
- ~~(b)~~ (e) Signs complying with the applicable regulations set forth in Article 21 of this chapter;
- ~~(d)~~ (f) Small family day care homes;<sup>1</sup> and
- ~~(f)~~ (g) Other accessory uses and buildings customarily appurtenant to a permitted use.

##### Section 3:

Section 8-21711.(b) (On lands designated hill face open space on the general plan land use diagram: Uses.) Article 17.1 (O-S Open space district) of Chapter 2 (Zoning), Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

Sec. 8-21711. On lands designated hill face open space on the general plan land use diagram: Uses.

(b) Accessory uses:

- ~~(3)~~ (1) Home occupations, in principal dwelling unit only- ;

~~(2)~~ (2) Rooming and boarding of not more than two persons;

~~(3)~~ (3) Secondary dwelling units<sup>3</sup>.

~~(4)~~ (4) Signs complying with the applicable regulations set forth in Article 21 of this chapter; and

**Section 4:**

Section 8-21713. (On lands designated hill open space on the general plan land use diagram: Uses.) Article 17.1 (O-S Open space district) of Chapter 2 (Zoning), Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

Sec. 8-21713. On lands designated hill open space on the general plan land use diagram: Uses.

(b) Accessory uses:

~~(7)~~ (1) Home occupations <sup>3</sup> ~~in principal dwelling unit only.~~

~~(4)~~ (2) One guesthouse, not rented or otherwise conducted as a business;

~~(4)~~ (3) Private garages and other structures for the storage of equipment, parking areas and private stables;

~~(2)~~ (4) Roadside stands complying with the applicable regulations set forth in Article 21.3 of this chapter;

(5) Rooming and boarding of not more than two persons;

~~(6)~~ (6) Secondary dwelling units<sup>3</sup>.

~~(3)~~ (7) Signs complying with the applicable regulations set forth in Article 21 of this chapter;

~~(6)~~ (8) Other accessory uses and buildings customarily appurtenant to a permitted use;

**Section 5:**

Section 8-21713.1.(b) (On lands designated open space on the general plan land use diagram: Uses.) Article 17.1 (O-S Open space district) of Chapter 2 (Zoning), Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

(b) Accessory uses:

~~(7)~~ (1) Home occupations ~~in principal dwelling unit only.~~

~~(4)~~ (2) One guesthouse, not rented or otherwise conducted as a business;

~~(4)~~ (3) Private garages and other structures for the storage of equipment, parking areas and private stables;

~~(2)~~ (4) Roadside stands complying with the applicable regulations set forth in Article 21.3 of this chapter;

(5) Rooming and boarding of not more than two persons;

~~(6)~~ (6) Secondary dwelling units<sup>3</sup>.

~~(3)~~ (7) Signs complying with the applicable regulations set forth in Article 21 of this chapter; and

~~(6)~~ (8) Other accessory uses and buildings customarily appurtenant to a permitted use;

## Section 6:

Sec. 8-22159.5. (Secondary dwelling units.), Article 21.3 (Special Provisions Applying to Miscellaneous Uses) of Chapter 2 (Zoning), Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

Sec. 8-22159.5. Secondary dwelling units.

Secondary dwelling units, as defined in this chapter, shall be allowed in any single-family residence district, one- and two-family residence district or residential planned district allowing one- or two-family dwellings, open-space and planned district districts subject to the following ~~requirements, restrictions, limitations and standards~~:

(a) *Permitting procedure.* Any application for a secondary dwelling unit that meets the location and development standards contained in this subsection (b) shall be subject to ministerial review and approval by the development organization staff without discretionary review or public hearing. No secondary unit shall be established or maintained until there has been a building permit approved by the development organization. The application for ~~such~~ the permit shall include:

- (1) Site plan indicating location of existing residence, proposed secondary dwelling unit and parking;
- (2) Floor plan of existing residence and proposed secondary dwelling unit; and,
- (3) Elevations of all sides of the principal and secondary dwelling unit.
- (4) A topographic survey and grading plan may be required.

(b) *Criteria for secondary dwelling units.*

(1) Location:

- a. ~~Secondary dwelling units~~ Only one secondary dwelling unit shall only be allowed in conjunction with an existing or proposed single- family dwelling unit on a corner lot or a larger sized interior lot legal lot<sup>1</sup> with a minimum lot area<sup>1</sup> equal to or greater than 5,000 square feet. ; provided, however, that no more than two dwelling units shall be placed on the same parcel.
- b. A secondary dwelling unit shall not be allowed on a lot greater than 7,500 square feet located in the R-G district or on a lot greater than 6,000 square feet located in the R-3 district.
- c. A secondary dwelling unit shall not be allowed on constrained land as identified in Sections 8-21821.1 and 8-21715.1 of this chapter.
- d. A secondary dwelling unit is not required to meet the density requirements of the General Plan, but shall otherwise be consistent with General Plan text and diagrams as provided in Government Code §65852.2.
- e. A secondary dwelling unit may be attached (i.e., through conversion of existing floor area or addition of new floor area) or detached to the existing/proposed principal dwelling.
- b. f. ~~The~~ A secondary dwelling unit shall only be located only within the an area of the lot allowed for the principal dwelling single-family dwelling by the zoning ordinance as established by its zoning district. The secondary dwelling unit may be established through conversion of existing or construction of new floor area. ÷
  1. ~~Conversion of existing floor space area in a single family dwelling;~~

- ~~2. An addition to an existing single family dwelling;~~
  - ~~3. Conversion of an existing accessory structure, provided it is located within the area allowed for principal dwellings; and~~
  - ~~4. The construction of a new accessory structure which is located within the area allowed for principal dwellings.~~
- ~~c. For interior lots, secondary dwelling units may be allowed only if there exists a twelve foot wide side yard between the principal structure and the interior lot line on one side.~~
- (2) ~~Occupancy: Both units~~ A secondary dwelling unit may be occupied as a separate single-family dwellings only if the legal owner of the lot occupies one of the ~~units dwellings located on the lot~~; otherwise, the ~~two units~~ secondary dwelling unit and the dwelling to which it is accessory shall be occupied as if they were one single-family dwelling. Nothing in this section prohibits ~~one or both the secondary dwelling unit or principal dwelling on the lot of the dwelling units to from~~ remaining vacant. The City Development and Environmental Services Director shall require recordation of a deed restriction setting forth this occupancy requirement ~~before issuing a building permit.~~
- (3) ~~Size: The total floor area<sup>1</sup> of the secondary dwelling unit shall be no less than two hundred and seventy-five one hundred fifty square feet nor more than six hundred square feet. The secondary dwelling unit shall have no more than one bedroom.~~ the maximum allowable area permitted based on the following table:

Parcel Size	Maximum Allowable Total Floor Area <sup>1</sup> of Unit
≥ 5,000 square feet	700 square feet
≥ 8,000 square feet	800 square feet
≥10,000 square feet	900 square feet

- (4) Design:
- ~~a. The unit shall be clearly subordinate to the principal dwelling unit on the parcel by size, location and appearance. A secondary dwelling unit shall incorporate architectural features, building materials and colors that are compatible with the existing or proposed principal dwelling unit.~~
  - ~~b. The exterior appearance and character shall reflect that of the existing principal dwelling unit.~~
  - ~~e. b.~~ Outside stairways to the secondary dwelling unit shall not be in the front of the principal dwelling unit.
- (5) Building height<sup>1</sup>: An attached or detached secondary dwelling unit located in the area permitted for the principal unit may not exceed the building height limitation applicable to the principal unit on the lot.
- (6) Number per lot: A lot may not have more than one secondary dwelling unit. In no case shall the total number of dwellings<sup>1</sup> (i.e., principal and secondary units) exceed two on any lot developed with a secondary dwelling unit.
- (7) Number of bedrooms: A secondary dwelling unit may not have more than two bedrooms.

(5) (8) ~~Parking: The provisions of Article 20 of this chapter (Parking Regulations) shall be applicable to the principal dwelling unit and the secondary dwelling unit with the following modifications: The secondary dwelling unit shall be provided with one off street parking space on the subject site; it may be uncovered, but it may not be located in the required front or side street side yard and it may not be a tandem space. When parking is provided within an interior side yard, the minimum side yard width shall be twelve feet. This parking~~



~~space is in addition to the off-street parking required for the principal dwelling. The required parking for a secondary dwelling unit shall conform to the provisions of Article 20 of this chapter.~~

~~(6) Subdivision: No subdivision of land or air rights shall be allowed. The city shall require recordation of a deed restriction setting forth this restriction.~~

~~(9) Permanent foundation: A permanent foundation shall be required for all secondary dwelling units.~~

(c) Listed Historic Lots. Notwithstanding subsection (a), a secondary dwelling unit may only be allowed on a lot that is listed in the National Register of Historic Places, the California Register of Historical Resources or any adopted local list of historic resources if Site Plan and Architectural Approval is granted by the Historical Architectural Review Board.

## **Section 7:**

Section 8-22003. (Required parking spaces by types of use.), Article 20 (Parking, loading areas and regulations pertaining to vehicle storage in various zoning districts) of Chapter 2 (Zoning), Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

Sec. 8-22003. Required parking spaces by type of use.

The number of off-street parking spaces required for each use shall be as stipulated in the following section. In computing the number of off-street parking spaces required, a fractional space of one-half space or more shall be counted as one space.

(a) Residential uses.

(1) Dwellings, single-family, duplexes:

- a. Dwellings, single-family, with four or fewer --2 covered
- b. Dwellings, single-family, with five or more bedrooms--3 covered.

(2) Dwellings, multiple (including apartments, condominiums, townhouses, live/work<sup>3</sup> units, rooming and boarding houses<sup>1</sup>, and single room occupancy (SRO) and efficiency<sup>1</sup> units):

- a. Senior citizen housing developments<sup>1</sup>, efficiency apartments<sup>1</sup>, single room occupancy units<sup>1</sup> and rooming and boarding houses<sup>1</sup>--0.5 covered spaces per unit for residents plus 0.5 uncovered spaces per unit designated for guest parking only.
- b. Studio and one-bedroom units--1 covered space per unit for residents plus 0.5 uncovered spaces per unit (1.5 spaces per live/work<sup>3</sup> unit) designated for guest parking only.
- c. Two bedroom units and larger--1 covered space per unit for residents plus 0.5 uncovered spaces per unit (1.5 spaces per live/work<sup>3</sup> unit) designated for guest parking only.

The planning commission may not reduce parking requirements within section (a)(2) for a project where, based upon substantial evidence, there is insufficient off-street parking to meet the needs of the neighborhood. Where there is sufficient off-street parking to meet the needs of the neighborhood, a parking reduction may only be granted by the The planning commission may reduce the parking requirements within section (a)(2) through site plan and architectural approval if, based on evidence provided by the project applicant, it makes one of the following findings:

- i. Due to the use's proximity to alternative transportation infrastructure and service, including but not limited to BART, Amtrak, and other passenger rail services, bus service, or similar, the use is likely to require a lower level of parking than is required by similar projects not proximate to alternative transportation because residents will have viable transportation alternatives available.
  - ii. Due to the use's proximity to amenities, and/or due to the desire to create a more pedestrian oriented environment in and around the project site, a reduction in required parking will further the goal of enhancing and strengthening the neighborhood, and, furthermore, that residents will have access to amenities such as shopping, entertainment, and employment without necessitating the use of automobiles.
  - iii. Due to the anticipated tenancy, including but not limited to affordable units, senior citizen units, single room occupancy (SRO) and efficiency<sup>1</sup> units, and special needs housing, and based on quantifiable evidence, the use is not likely to require the same levels of parking as standard residential development. This finding shall only be used for projects that have entered into a binding agreement with the city or other public agency guaranteeing the project will serve the identified tenancy type.
  - iv. Due to the availability of on-street parking, the guest parking requirement for the project will be lower than a development where adequate on-street parking is not provided. This finding shall only be used to lower the guest parking requirement, and not the resident parking requirement.
- (3) Dwellings, secondary--1 space per bedroom (may be uncovered). Space(s) must be provided in the rear and side yard setback areas. Where parking in the rear and side yard setback areas is not feasible due to site-specific conditions, then one space may be located in the front yard on an extended driveway developed in conformance with this article. Tandem parking is permitted only if an extended driveway cannot be accommodated.
  - (4) Mobile home--2 per mobile home space.
  - (5) Mobile home park community building--1 per 10 mobile home spaces.
  - (6) Mobile home park visitor parking--1 per 5 mobile home spaces located no further than 400 feet from the mobile home spaces to be served.